**PMOT**

ATTORNEY CONTACT INFO

Attorney for XXX

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.:

) Dept. No.:

**CLIENT,** ) HEARING REQUESTED

DOB: Date of Birth )

)

A MINOR. )

)

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.**

**MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS**

COMES NOW, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and submits this Motion for an Order to Allow CLIENT to Testify by Alternative Methods. This Motion is made pursuant to NRS 50.570 et seq., and is further based upon the affidavit and exhibit attached hereto, the papers and pleadings on file, and any other such documentary or oral evidence as may be presented at the hearing set for this Motion.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

This matter is set for a contested hearing on the allegations set forth in the Abuse/Neglect petition against CLIENT’s father, Father, before Hearing Master Hearing Master in Courtroom Courtroom, Department Department, on Date at Time. The Deputy District Attorney prosecuting the case has indicated he will be calling CLIENT, a minor, to testify at the hearing. As is set forth in the attached Letter from Therapist, CLIENT’s therapist, hereinafter referred to as “Exhibit A,” CLIENT has indicated that testifying in the presence of his father would cause him severe anxiety and distress.

CLIENT’s therapist has indicated that if CLIENT is forced to testify while facing his father it is very possible that his mental state would regress and he would be unable to effectively give testimony. *See* “Exhibit A,” attached hereto. Therapistalso indicates in her letter that when CLIENT is asked about his father, he becomes very anxious, fidgety, and unfocused and has trouble calming himself down.[[1]](#footnote-1) CLIENT has also told Therapist that he fears for both his own safety and that of his mother, “whenever he is in his father’s presence.”[[2]](#footnote-2)

In recognition of Therapist’s opinion that CLIENT will be caused further trauma if forced to testify before his father regarding the domestic violence he suffered and witnessed at the hands of his father, it is respectfully requested that CLIENT be allowed to testify by alternative methods in accordance with the statutory provisions set forth below.

**II. LEGAL ARGUMENT**

NRS 50.570 grants this Court discretion to conduct a hearing to determine if a child witness should be allowed to testify by an alternative method. To make that determination, NRS 50.580 provides in pertinent part, “[s]tandards for determining whether a child witness may testify by alternative method,”:

2. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

(a) The nature of the proceeding;

(b) The age and maturity of the child;

(c) The relationship of the child to the parties in the proceeding;

(d) The nature and degrees of emotional trauma that the child may suffer in testifying; and

(e) Any other relevant factor.

NRS 50.590 further sets forth factors for the Court to consider in deciding whether or not a child witness should be permitted to testify by alternative means, including the relative availability of alternative methods; whether there is a means or mechanism of reducing the trauma endured by the child in testifying short of alternative methods; the nature of the case and the allegations; the relative rights and interests of the parties; the importance of the child’s testimony to the resolution of the case, and the nature and degree of the emotional trauma that the child will suffer if not permitted to testify by alternative methods.

In the instant case, the facts support permitting CLIENT to testify outside the presence of his father by an alternative method in order to forestall any further harm to this young boy. CLIENT is six (“6”) years old and currently resides with foster parents; his mother, Mother was also charged in the instant petition due to her persistent drug abuse. Mother has entered a “No Contest” plea and has voluntarily enrolled herself in drug detoxification treatment at Westcare. Since CLIENT has been residing with his foster family, he has experienced growing trepidation at the prospect of being called to testify regarding the violence he has experienced and witnessed.

The allegations set forth in the petition are related almost entirely to the actions of CLIENT’s father and his volatile relationship with CLIENT’s mother, Mother. The petition details numerous acts of domestic violence that Father perpetrated against Mother and the children and also recounts numerous occasions when Mother neglected to appropriately care for and feed her children due to being under the influence of marijuana, methamphetamine, and alcohol, among other substances. In the last hearing related to this case, CLIENT’s father again reiterated his intention to seek a trial on these allegations and sought to have the “No Contact” order imposed by the court rescinded so that he could resume visiting with his children. At that time, CLIENT again stated through counsel the discomfort he felt when he was in the same room with his father and that he had yet to feel as if he, his mother, or his younger siblings are safe from the aggression of his father.

CLIENT has expressed many times to counsel the intense anxiety he feels just thinking about having to testify in front of his father. CLIENT has asked counsel many times to inquire if he will be permitted to speak with the judge privately about the allegations in the petition because he is unsure if he will be able to maintain his composure with his father in the room staring angrily or disapprovingly at him. Furthermore, CLIENT’s therapist has written a letter to the Court indicating that she believes if CLIENT is forced to testify before his abusive father, he will likely backslide and much of the therapeutic progress that has been made may well be squandered. Therapist wrote, “due to CLIENT’s high level of anxiety and fearfulness, an alternate way of testifying such as remote or taped testimony may be more fruitful.”[[3]](#footnote-3)

Due to the private nature of the allegations contained in the petition, CLIENT’s young age, and the salience of his testimony with regard to proving the allegations, NRS 50.580 supports the Court allowing CLIENT to testify by alternative methods. Further, all requirements delineated in NRS 50.590 are satisfied, including the requirement that there be reliable alternative methods available by which to obtain the needed testimony from the child. Here, CLIENT can testify privately to Hearing Master Hearing Master in her chambers with only attorneys present while his father is permitted to view the testimony from another location. In sum, the facts and law both support allowing CLIENT to testify by alternative methods because permitting the same is readily achievable and will do no unfair prejudice to the defendant.

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**III. CONCLUSION**

NRS 50.570, et seq., entrusts to this Honorable Court the power to prevent the enduring of unnecessary trauma by a child witness by permitting the witness to testify by alternative methods when certain enumerated conditions are met. As set forth in the preceding Motion and accompanying Exhibit(s), each and every condition required for permitting alternative methods of testifying are met in this matter. Therefore, it is respectfully requested that this Court issue an order allowing CLIENT to testify by an alternative method.

Respectfully submitted this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

**AFFIDAVIT OF COUNSEL**

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

I, Attorney after being first duly sworn, deposes and says:

1. I am a licensed practicing attorney, admitted in the State of Nevada and an attorney with Firm appointed to represent the subject minor, CLIENT.
2. I have personal knowledge of the facts alleged herein or the assertions are based on information and belief.
3. I have met with CLIENT, age 6.
4. CLIENT has expressed great anxiety, distress, and some trepidation about the prospect of testifying in the presence of his father regarding the domestic violence allegations contained in the petition.
5. Upon information and belief, the experience of testifying before his father will cause CLIENT an increased likelihood of long-term emotional damage and make more traumatic an already devastating task.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SUBSCRIBED AND SWORN to before me

this Day day of Month, Year.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOTARY PUBLIC in and for

County of Clark, State of Nevada

***CERTIFICATE OF SERVICE***

I HEREBY CERTIFY that on the Day day of Month, Year, I served the foregoing **MOTION FOR CHILD WITNESS TO TESTIFY BY ALTERNATIVE METHODS** by the Court’s electronic system (EFS E-File & Serve) and/or depositing in the U.S. Mail in a sealed envelope with first-class postage fully prepaid thereon, to the following:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

An employee of

Firm

Exhibit “A”

1. See Exhibit A. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. *Id*. [↑](#footnote-ref-3)